

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Archetype Consulting, Inc., with a principal place of business at 75 Arlington Street, Boston, MA 02114 (hereafter called "Contractor"). The Contractor's form of business organization is incorporation. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of Business Intelligence and Reporting related to the State's on-line health insurance exchange, Vermont Health Connect. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$2,571,307.
4. **Contract Term.** The period of Contractor's performance shall begin on January 3, 2015 ("Effective Date"), and end on December 31, 2015.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.
Approval by the Secretary of Administration is required.
Approval by the Commissioner of DII is required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly.
8. **Attachments.** This contract consists of 48 pages including the following attachments, which are incorporated herein:
Attachment A - Specifications of Work to be Performed
 - Exhibit 1 – State Security Policies
 - Exhibit 2 - Department of Vermont Health Access Request for Approval to

Subcontract

Attachment B - Payment Provisions

Attachment C - Customary State Contract provisions

Attachment D - Other Terms and Conditions

Attachment E - Business Partner Agreement

Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E
- 7). Attachment F
- 8). Other Attachments (if any)

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

ROBERT SKOWRONSKI, DEPUTY COMMISSIONER DATE
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Mark.Larson@state.vt.us

JASON WEBSTER, PRESIDENT DATE
75 Arlington Street, Suite 500
Boston, MA 02116
Phone: (617) 967-2669
Email: JWebster@ArchetypeConsulting.com

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

The Contractor shall provide the following business intelligence and reporting services related to the State's on-line health insurance exchange, Vermont Health Connect ("VHC").

1. DETAILED DESCRIPTION OF PRODUCTS AND SERVICES:

- A) New Development Activities - Contractor shall perform the following, as further detailed in Section 2 "Work products/Deliverables," below:
- i. Internal Revenue Service (IRS) Reporting: Complete Monthly Report updates, Annual Report, and support the 1095A Notice and correction process
 - ii. Centers for Medicare and Medicaid Services (CMS) Reporting: Comply with Federal Reporting mandates from CMS which include annual enrollment report and updates to Weekly, Monthly, and Quarterly report
 - iii. Provide Financial Reporting
 - iv. Create Operational Dashboards
 - v. Perform Financial Reconciliation with Benaissance, the State's third party premium processor
 - vi. Perform Carrier Reconciliation
 - vii. Provide SHOP Reporting
 - viii. Provide CoC Reporting
 - ix. Provide Renewals Reporting
- B) Maintenance and Operations (M&O) – Contractor shall provide ongoing application support for OBIEE (Oracle Business Intelligence Enterprise Edition) and ODI (Oracle Data Integrator) as follows:
- i. M&O Defects: Troubleshoot defects that result from user changes or system changes made in Siebel, OPA (Oracle Rules Engine), WebCenter, etc.
 - ii. End User Support: Support daily State activities including report development, data validation, and subject matter experts on use of data to answer business decisions

2. WORK PRODUCTS/DELIVERABLES

- A) Interim Renewals Reporting – Contractor shall provide end of year VHC enrollment numbers for 2014, together with detailed reporting and analysis, as required
- B) IRS Reporting – Pursuant to a separate contract with the State, contractor is developing Federally mandated monthly and annual reporting. Monthly submissions and updates will continue through December 31, 2015 and Contractor shall submit the annual 1095A report on behalf of the State in January 2015. The Contractor will create and deliver the XML files in accordance with IRS specifications on or before January 31, 2015.
- i. On or before 1/31/2015 – Annual IRS report complete and approved by the IRS based on IRS testing guidelines.
 - ii. Contractor shall perform ongoing corrections and process updating throughout 2015.

- C) Interim Change Process and Lion's Den Support – Contractor shall continue to support the State's Interim Change Process ("ICP") in an oversight and/or hands-on capacity as needed
- i. Contractor shall complete ICP Reports required to monitor the ICP process managed by OptumInsight Inc. ("Optum") and State teams. Summary reports and transactional level detail shall be provided to the State daily, until the reports are no longer needed by the State.
- D) Change of Circumstance Reporting Functionality – Once OneGate version 3.3.2.10 is deployed on the VHC; Contractor shall replace the ICP reporting with full Change of Circumstance reporting functionality.
- i. Contractor shall provide new Change of Circumstance reporting to replace the Interim Change of Circumstance Reporting, as OneGate version 3.3.2.10 is deployed into the VHC production environment
- E) SHOP Reporting – As the State's third party System Integrator, Optum delivers VHC small business ("SHOP") functionality, reporting needs related to employee and employer information will grow.
- i. Contractor shall deliver new reporting functionality as SHOP functionality is deployed into the VHC production environment. Delivery shall be deemed complete upon written acceptance by the State contracts manager and is dependent on Siebel functionality.
- F) Fully Integrated Renewal Reporting – In anticipation of automated renewal functionality during Open Enrollment for 2016 coverage, Contractor shall re-design the current renewal functionality to align with new data model updates and triggers.
- i. No later than 11/15/2015 Contractor shall deliver Full Renewal Reporting based on updated OneGate versions and functionality.
- G) Ad-hoc reporting requests – State and VHC leadership and functional teams are likely to require numerous ad hoc reports to support issue investigation, outreach, operational decision-making and other needs. The Contractor will continue to provide such reports as prioritized by the State, up to the maximum payment amount allowed under this contract. All ad-hoc requests shall be directed by the State in writing through Nick Bechard: Nick.Bechard@state.vt.us. The Contractor shall not perform ad-hoc work that has been requested by any person other than Nick Bechard, unless the State has designated an alternative contact in writing. It is expected that approximately 20% of the Contractor's time will be spent on ad-hoc activities, but that is subject to State prioritization.
- H) Maintenance – Archetype will maintain Oracle Data Integrator interfaces and troubleshoot and fix any issues due to data structure changes in the source systems, or unexpected data which cause the interfaces to fail. Additional maintenance of the data warehouse and existing reports in Oracle Business Intelligence Enterprise Edition will be performed if issues or performance impacts occur.

The maintenance of the OLAP server and tools are not considered in scope for this contract. Upgrades to Oracle Data Integrator, Oracle Business Intelligence Enterprise

Edition, and the reporting server are not considered in scope.

III. FEDERAL REQUIREMENTS

The Contractor represents and warrants that it is knowledgeable about and shall comply with the following federal regulations as they pertain to straight or matched federal dollars received under this Contract:

- A-110: "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" (OMB Circular A-110);
- A-122: "Cost Principles for Non-Profit Organizations" (OMB Circular A-122);
- A-133: "Audits of States, Local Governments and Non-Profit Organizations" (OMB Circular A-133); and
- 2 CFR Chapter I, Chapter II, Part 200, et al.: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule"
<http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>.

IV. KEY PROJECT STAFF

Contractor Personnel will be properly educated, trained and qualified for the Services it is to perform. Contractor will put appropriate training in place to meet initial and ongoing training requirements of Contractor Personnel assigned to perform Services hereunder.

For purposes of this Contract, "Contractor Personnel" shall mean and refer to Contractor's employees and employees of Contractor's permitted subcontractors or permitted agents assigned by Contractor to perform Services under this Contract.

- A. Contractor shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services. Prior to the initiation of work under this Contract, Contractor shall provide to the State all job descriptions and the resumes of Contractor Personnel assigned to perform the Services.
- B. All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract and State's Security Policies, as set forth in Exhibit 2; as such policies may be modified, amended or replaced from time to time.
- C. Prior to accessing the VHC System, Contractor Personnel with no previous investigation within the past five (5) years must undergo a National Agency Check and Investigation plus Credit check (NACIC), or a background check as defined by, and in accordance with, the Agency of Human Services Hiring Standards Policy 4.02, which policy has been made available to Contractor under separate cover. Contractor Personnel will not require a background investigation if Contractor has conducted a background investigation within the last five (5) years which meets or exceeds the requirements of this Contract or the AHS Hiring Standards Policy 4.02.

- i. No Contractor Personnel will be placed on the project when a felony conviction is present that involves a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, fraud, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes, or a crime involving illegal drugs and/or controlled substances. Contractor shall notify the State when a misdemeanor conviction is present that involves a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes, or a crime involving illegal drugs and/or controlled substances. The State shall consider whether disqualification is appropriate using criteria established in the AHS Hiring Standards Policy 4.02 and recommend approval or disapproval of the assignment of Contractor Personnel.
 - ii. Contractor shall certify as of the date of this Contract on an ongoing basis as Contractor Personnel are added to the project, that (a) it has conducted background investigations for all Contractor Personnel performing Services under this Contract in accordance with this Contract; (b) no background investigation so performed indicates a felony conviction is present that involves a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, fraud, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes, or a crime involving illegal drugs and/or controlled substances; and (c) Contractor has notified the State of all misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes, or a crime involving illegal drugs and/or controlled substances.
- D. All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement in a form acceptable to the State.

- E. Contractor shall assign the following “Key Project Staff,” to meet the requirements of this Contract:

Role
Engagement Manager
Solutions Architect
Functional Lead
ETL Developer Lead
ETL Developer
Report Developer
Report Developer
Senior Data and Business Analyst
ETL Developer

Contractor will cause the Contractor Personnel filling the Key Project Staff positions to devote full time and dedicated effort to the provision of the Services.

V. KEY PROJECT STAFF CHANGES

- A. The term “Key Project Staff” for purposes of this procurement, means Contractor Personnel assigned by Contractor to perform Services under this Contract and deemed by both parties as being both instrumental and essential to the Contractor’s satisfactory performance of this Contract. The State and the Contractor will agree on staffing plans, including Key Project Staff and percent of time individual Contractor team members dedicate to this Contract.
- B. Location of Contracted Functions and Personnel
- The Contractor’s Key Project Staff must be able to participate during VHC-related meetings as scheduled by the State.
 - The State and the Contractor shall establish appropriate protocols to ensure that physical property/facility security and data confidentiality safeguards are maintained. Access to any non-Vermont facility used to support the VHC shall be reviewed and granted or denied within five business days of the request.
- C. The Contractor must ensure Key Project Staff have and maintain relevant current license(s) and/or certification(s). At a minimum, all Contractor Project Managers shall be PMI certified.
- D. The Contractor shall seek and receive State approval before hiring or replacing any Key Project Staff which shall not be unreasonably withheld. The State shall respond to Contractor within four (4) business days upon receiving name and resume of Contractor’s Key Project Staff. The Contractor must provide the State with written notification of anticipated vacancies of Key Project Staff within two business days of receiving the

individual's resignation notice, the Contractor's notice to terminate an individual, or the position otherwise becoming vacant. Replacements for Key Project Staff shall have qualifications and applied experience that meets or exceeds those required by the State. Replacements for Key Project Staff shall be subject to the reference and background checks described above. The State has the right to reasonably disapprove of any replacement Key Project Staff. Contractor shall provide the first two weeks of all approved replacement resources at no charge.

- E. If Contractor reassigns Key Project Staff away from the State project for any reason without the State's approval, Contractor agrees to replace with a new Key Project Staff member acceptable to the State.
- F. The State reserves the right to require removal or reassignment of Contractor Key Project Staff who are found unacceptable to the State, provided Contractor is provided written notice of State's concern, and Contractor is provided up to thirty days to address and remediate concerns. If State is not satisfied after 15 days of written notice, Contractor will agree to remove Key Project Staff. The Contractor will develop a plan for the replacement of Key Project Staff, all within two (2) weeks of agreement to remove.
- G. In the event the State is paying for specific Services on a time and materials basis, and the State believes that the Contractor is inefficiently utilizing any Resources or Contractor Personnel assigned to perform Services, the State may give the Contractor a notice requesting a decrease in the number, or reassignment of, Contractor Personnel. Upon receipt of such notice, the Contractor shall, within five (5) days from the State's notice, provide the State with a recommendation which the Contractor reasonably considers will accomplish the requisite improvement.
- H. If Contractor fails in any material respect to meet the Requirements, and a root cause analysis determines that the failure was due in material part to an inadequate number of personnel, then Contractor shall promptly assign appropriate personnel to address the inadequacy. As mutually agreed, changes to the number of Contractor Personnel shall be documented as part of the status reporting process.

VI. SUBCONTRACTOR REQUIREMENTS

Pursuant to Section 15 of Attachment C to this Contract, if the Contractor chooses to subcontract work under this Contract, the Contractor must first fill out and submit the Request for Approval to Subcontract Form (Exhibit 3) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Request for Approval to Subcontract Form, the State shall review and respond within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Subcontract Form to:

Meaghan Kelley: Meaghan.Kelley@state.vt.us

Should the status of any third party or Subrecipient change, the Contractor is responsible for updating the State within fourteen (14) days of said change.

VII. CONTACTS

The contacts for this contract are as follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>
Name:	Meaghan Kelley	Robert Skowronski
Phone #:	802-871-3302	802-324-5604
E-mail:	Meaghan.Kelley@state.vt.us	Robert.Skowronski@state.vt.us

	<u>For the Contractor</u>
Name:	Ruth McElroy
Phone #:	864-420-0860
E-mail:	RMcElroy@archetypeconsulting.com

VIII. NOTICES

For purposes of notice under Access to Public Records Act:

Dani Delong
Public Records Officer
Department of Vermont Health Access 312 Hurricane Lane Williston, VT 05495
Ph: (802) 879-5901 Fax: (802) 879-5962
Dani.delong@state.vt.us

For purposes of notice in the event of a security breach:

Jack Green
Security Officer
Department of Information and Innovation
Ph: (802) 828-3993
Jack.Green@state.vt.us

With a Required Copy in all cases to:

Howard Pallotta
General Counsel
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Ph: (802) 878-7967
Howard.Pallotta@state.vt.us

EXHIBIT 1

SECURITY POLICIES

1. CMS Minimum Acceptable Risk Standards for Exchanges, as amended by CMS from time to time
2. State of Vermont Security Policies, the Agency of Human Services Security Policies and the Vermont Health Connect Policies and procedures. These policies are available upon request.
3. Recommended Security Controls for Federal Information Systems, NIST Special Publication 800-53 (rev 3 or higher), to the extent not in conflict with 1 and 2 above.
4. IRS Safeguards Program – Publication 1075, FIPS 140-2 and IRS Security Bulletin 1075
5. HIPAA Security and Privacy Rules as amended by HITECH, as amended from time to time, and relevant CMS Regulations regarding HIPAA and Information Technology.
6. Any other information technology security policies implemented and/or adopted by the State, as amended from time to time. These policies shall be available upon request.
7. Prior to placement of Contractor Personnel on the project, the State will provide the appropriate level of privacy and security compliance training to Supplier Personnel as deemed necessary by the State.
8. Security measures requested by the State necessary to provide access to any State Facilities.

EXHIBIT 2
DEPARTMENT OF VERMONT HEALTH ACCESS
REQUEST FOR APPROVAL TO SUBCONTRACT

Date of Request: _____

Original Grantee Name:	_____	Grantee #:	_____
Address:	_____		
Phone Number:	_____		
Contact Person:	_____		
Agreement #:	_____	Signature:	_____

Subcontractor Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

Scope of Subcontracted Services: _____

Is any portion of the work being outsourced outside of the United States? **YES** **NO**
(Note to Business Office: If Yes, do not proceed further with approval until reviewed with Finance & Mgmt)

Dollar Amount of Subcontracted Services: \$ _____

Date Range for Subcontracted Services: Start: _____ End: _____

DVHA Program Manager:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: _____

Approval: _____ **Title:** _____ **Date:** _____

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. Contractor invoices shall be submitted no more frequently than monthly, but no later than quarterly, and shall include the number of hours worked during the specified billing by period and the total amount billed. The State shall pay the Contractor at the blended hourly rate of \$165.00 USD per hour for time and materials not to exceed \$2,295,810 plus travel expenses as incurred, payable after receipt and approval of invoice detailing time worked and services provided.
2. No benefits or insurance will be reimbursed by the State.
3. Invoices shall reference this contract number, include date of submission, invoice number, and amount billed for each budget line and total amount billed.
4. The Contractor is responsible for holding receipts and documentation on file for all contract expenditures and shall make documentation available upon request by the State in accordance with Attachment C to this Contract. Mileage expense for use of personal vehicles and meal expenses will be reimbursed at the current State rate. All travel expenses must be in compliance with State of Vermont Administrative Bulletin 3.4.
5. Services performed between January 3, 2015 and the start of this contract that are in conformity with Attachment A can be billed under this contract.
6. Invoices and any required reports shall reference this contract number and be submitted electronically to:
Emily Trantum: Emily.Trantum@state.vt.us
7. The total maximum amount payable under this contract for hourly billing and travel expenses shall not exceed \$2,571,307.

ATTACHMENT C
STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
- 4. Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
- 9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must

be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

10. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.)

Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

19. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

ATTACHMENT D OTHER TERMS AND CONDITIONS

1. DEFINITIONS.

- a. **“Contractor Document”** shall mean one or more documents, agreements or other instrument required by the Contractor or its licensors in connection with the performance of the Services, regardless of format, including any paper or “shrinkwrap,” “clickwrap” or other electronic version thereof.
- b. **“Contractor Personnel”** means and refers to Contractor’s employees and employees of Contractor’s permitted subcontractors or permitted agents assigned by Contractor to perform Services under this Contract.
- c. **“Customer Data”** means the following data, whether provided or produced before, on, or after the Effective Date, and whether owned by the State or by others, including data owned by the State’s Clientele: (1) all data that is provided by or on behalf of the State, or any State Clientele, to Contractor in order for Contractor to provide the Services, including keyed input and electronic capture of information by Contractor; (2) all data that is provided by or on behalf of Contractor to the State by means of the Services; (3) all data that is produced by means of Services as an intermediate step in using or producing any of the other Customer Data, including databases and files containing other Customer Data; and (4) all other data related to the performance of the Services, including resource volumes, asset lists, configurations, service levels, scripts, job schedules or other Exhibits. Without limiting the generality of the foregoing, Customer Data specifically includes personally identifiable information as defined in 9 V.S.A.2430 and “Protected Health Information” as defined under 45 CFR 160.103.
- d. **“Customer Data Laws”** means the laws and regulations applicable at any time and from time to time during the Term to the proper handling of Customer Data, including data privacy, handling of personal data, trans-border data flow and data protection, including, but not limited to the rules and regulations promulgated under HIPAA and HITECH and Chapter 62 of Title 9 of the Vermont Statutes.
- e. **“Resources”** means any and all Facilities, Software, Equipment, personnel, Information and all other goods, services, materials, fixtures, tangible and intangible items, intellectual property, assets, licenses, rights and capabilities of either Contractor or the State, regardless of the nature of the ownership, leasehold, licensing or the basis upon which any of the foregoing or the foregoing capabilities are available to such party.
- f. **“Software”** means the object code versions of applications programs, operating system software, licensing keys, network protocols and operating programs, computer software languages, utilities, other computer programs and related documentation, in whatever form or media, including the tangible media on which any of the foregoing are recorded, stored, transmitted and/or printed, together with all corrections, improvements, updates, derivative works, adaptations, versions, translations and releases thereof, which are used

to provide or otherwise in support of the provision of the Services. Absent any specific reference to the contrary, the term "Software" shall refer to: (i) all or any portion of Software owned by the State ("**State Software**"); (ii) Software used under license from a third party ("**Third Party Software**"); and/or (iii) Software that is owned or for which Contractor has an exclusive license ("**Contractor Software**"). References to Software shall be deemed to include the Documentation for such Software unless otherwise specifically indicated.

- g. "**State Clientele**" means any of the clientele of the State, including, but not limited to, individuals and small businesses, that use the VHC to assist with their decision-making processes regarding the type and manner of insurance that they obtain, and any other issues or concerns that may arise regarding their insurance coverage.

2. The insurance requirements contained in Attachment C, Section 7 are hereby modified by the addition of the following:

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain Technology Professional Liability insurance for all services performed under this Agreement, with minimum third party coverage of \$3,000,000 per claim, \$5,000,000 aggregate, and first party Breach Notification Coverage of not less than \$3,000,000.

3. ORDER OF PRECEDENCE; CONTRACTOR DOCUMENTATION.

The parties specifically agree that any language or provisions contained in a Contractor Document is of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document: (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (f) limit the time within which an action may be brought hereunder.

For purposes of this Attachment D, "Contractor Document" shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the Services set forth in Attachment A hereto, regardless of format, including any paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

a. Contractor Intellectual Property.

Contractor shall retain all right, title and interest in and to all Contractor Intellectual Property that Contractor delivers to the State in accordance with Attachment A of this Contract. "**Contractor Intellectual Property**" means any intellectual property, tangible or intangible, that is owned by Contractor and contained in or necessary for the use of the

items that Contractor is required to deliver to the State under this Contract, including Work Product (“**Deliverables**”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the Deliverables, the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to any such Contractor Intellectual Property that is incorporated into Work Product.

Without limiting any rights of the State in this Contract, Contractor acknowledges that this Contract is in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, and is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. This Contract is subject to, and incorporates by reference, 45 CFR 74.36 and 45 CFR 92.34 governing rights to intangible property. Contractor must deliver all State Software and all Work Product to the State in a manner that ensures the Centers for Medicare & Medicaid Services, an agency of the Department of Health and Human Services, obtain a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the State Software and Work Product for Federal purposes and to authorize others to do so. "Federal purposes" include the purpose of administering health insurance exchanges under the Affordable Care Act of 2010. Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the Department of Commerce at 37 CFR Part 401.

b. State Intellectual Property

The State shall retain all right, title and interest in and to all (i) State Data provided by the State, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible and (ii) State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “**State Intellectual Property**”).

As between the State and Contractor, the State shall be deemed to own all Customer Data, and Contractor shall at all times process the Customer Data in accordance with the terms of this Contract, and all applicable Laws.

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or, if specifically directed by the State, destroy all State Intellectual Property and all copies thereof in its possession, power or control in a manner that assures the State Intellectual Property is rendered unrecoverable, and Contractor shall have no further right or license to such State Intellectual Property. Except as set forth below, Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or

licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

c. Work Product

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, and delivered to the State pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State; provided, however, that the Contractor shall be granted an irrevocable, perpetual, non-exclusive, royalty-free license to any such Work Product to be used solely in connection with the performance of services for other states in the United States in support of such state's implementation of the Patient Protection and Affordable Care Act of 2010. In the event the Contractor requests a license to use State Work Product for any other commercial purposes, the Contractor shall request from the State the non-exclusive right and license to use and modify State Work Product, on such terms as may be acceptable to the State, including, but not limited to, a reduction to amounts to be paid to the Contractor hereunder or royalty payments for such use. In no event shall any consideration required by the State exceed the Maximum Contract amount.

Any and all derivative works of the State Work Product created by the Contractor and not delivered to the State as part of the Work Product shall be owned by the Contractor and the Contractor may charge for licensing such derivative works to third parties except when licensed to states in the United States in support of such state's implementation of the Patient Protection and Affordable Care Act of 2010. For the avoidance of doubt, such derivative works shall not be deemed to include State Intellectual Property, provided the Contractor is granted an irrevocable, perpetual, non-exclusive license to any such State Intellectual Property that is incorporated into such derivative works. To the extent required by Contractor, the State shall agree to assign and transfer, and will assign and transfer, to the Contractor all rights, title and interest in and to such derivative works, including without limitation all intellectual property rights related thereto.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

Periodically, and unless otherwise specified in the Statement of Work, no less frequently than each week during the Statement of Work Term, Contractor shall provide the State with the most current versions of all Work Product and related Documentation.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

- a. Confidentiality of Contractor Information.** Notwithstanding anything to the contrary in a Contractor Document, the Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a

binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

- b. Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. In addition to the provisions of this Section, the Party shall execute the HIPAA Business Partner Agreement attached as Attachment F. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract, including, but not limited to, State Information and Customer Data ("State Data"). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall use State Data only for the purposes of and in accordance with this Contract. The Contractor shall provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information.

Contractor shall cause all Contractor Personnel charged with performing Services in connection with this Contract, or who are otherwise in a position to obtain or be granted access to State Information, to execute a non-disclosure agreement in a form acceptable to the State. Contractor shall require that all Contractor Personnel comply with the provisions of the non-disclosure agreement and Contractor is responsible for any failure of any Contractor Personnel to comply with all such provisions; provided, however, that the State shall have the right to enforce the non-disclosure agreements, at Contractor's cost and expense, if and/or to the extent Contractor is unwilling or unable or fails to do so for any reason.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

- c. Security of State Data.** The Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 3 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

Throughout the Term, Contractor and its permitted assignees and subcontractors shall comply with all information/technology control policies and standards applicable to the security of data, including, but not limited to, the Data Security Standards, the Insurance Industry Regulations, and Exhibit 5 [Security Policies] to Attachment A. If, as a result of an on-site review or audit performed in accordance with this Contract, Contractor is found not to be in compliance with such policies or standards, then Contractor shall, at its

expense, take appropriate steps to promptly correct such non-compliance.

- d. **Back-Up Policies:** The Contractor's back-up policies have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.
- e. **Security Breach Reporting.** The Contractor acknowledges that in the performance of its obligations under this Contract, it will be a "data collector" pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In addition to the requirements set forth in any Business Associate Agreement as may be attached to this Contract, in the event of any actual or suspected security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (including PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device (; loss or theft of printed materials; or failure of security policies) (collectively, a "Security Breach"), and in accordance with 9 V.S.A. § 2435(b)(2), the Contractor shall immediately notify appropriate State personnel of such Security Breach.

The Contractor's report shall identify: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes, HIPAA and/or HITECH) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume all costs associated with a Security Breach and Notification Event, including but not limited to, notice, outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring, in the sole determination of the State.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

- f. Destroyed or Lost Data.** Contractor will not delete or destroy any State Data or media on which State Data resides without prior authorization from the State. In the event any the State Information is lost or destroyed due to any impermissible act or omission of Contractor, including any breach of the security procedures described herein or the negligence of Contractor, Contractor shall be responsible for the prompt regeneration, reconstruction or replacement of such State Data. Contractor shall prioritize this effort so that the loss of State Data will not have any adverse effect upon the Services. The State agrees to cooperate with Contractor to provide any available information, files or raw data needed for the regeneration, reconstruction or replacement of the State Data. If Contractor fails to fully regenerate, reconstruct and/or replace any lost or destroyed State Data within the time reasonably set by the State, then the State may obtain data reconstruction services from a third party, and Contractor shall cooperate with such third party as requested by the State.

6. TREATMENT OF IRS INFORMATION.

a. Performance

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1. All work will be done under the supervision of the contractor or the contractor's employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract.
Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
6. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be

available and activated to protect against unauthorized use of and access to Federal tax information.

7. No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
8. The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
9. The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

b. Criminal/Civil Sanctions:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
3. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who

knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

c. Inspection:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

7. SUBCONTRACTORS

Contractor shall be responsible for directing and supervising each of its subcontractors and any other person performing any of the Work under an agreement with Contractor. Contractor shall be responsible and liable to the State for all obligations, services and functions performed by any such third parties, whether subcontractors or any other permitted parties, to the same extent as if performed or to be performed by Contractor.

Contractor's subcontracts shall contain terms and conditions substantially similar to the provisions of this Contract necessary to cause Contractor and each subcontractor or any other permitted parties to remain in compliance with the obligations of this Contract. All subcontracts shall be assignable to the State or a successor identified by the State. In addition, to the extent that any subcontractor will have access to Customer Data or otherwise have contact with State Clientele (and prior to permitting any subcontractor to access Customer Data), Contractor shall be responsible for ensuring that such subcontractor is fully knowledgeable about and will comply with the rules, regulations, policies and guidelines promulgated by CMS, including those relating to HIPAA, as well as comply with all other Data Security Standards. Contractor will not disclose State Data to any third party, including any Contractor Affiliates, subcontractor or other entity or any Contractor Personnel, until due and proper execution of non disclosure agreements in a form acceptable to the State. Contractor will also cause any approved Contractor subcontractor to enter into a Business Associate Subcontract in substantially the form of the Business Partner Agreement attached to this Contract as Attachment F.

The State may revoke approval of any Contractor subcontractor, if its performance is deficient, misrepresentations were found to have been made at any time, or for other factors related to the State's experience with or any background reference checks made regarding such subcontractor (whether or not related to this Contract); provided, however, that in no event will such revocation be deemed to relieve Contractor of its obligations to continue to perform the Services of such subcontractor or otherwise relieve Contractor of its liability to the State for the acts and/or omissions of such subcontractor.

8. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

- a. General Representations and Warranties.** The Contractor represents, warrants and covenants that:

1. The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
2. There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
3. The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
4. The Contractor owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Contract and, to the best of Contractor's knowledge after due inquiry, none of the deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
5. The Contractor has adequate resources to fulfill its obligations under this Contract.

b. Contractor's Performance Warranties. Contractor represents and warrants to the State that:

1. All deliverables will be free from material errors and shall perform in accordance with the specifications therefor.
2. Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor shall refund that portion of the fees attributable to each such deficiency.
3. All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
4. Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

c. Limitation on Disclaimer. Notwithstanding anything to the contrary set forth in a Contractor Document, the express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

- d. Effect of Breach of Warranty.** If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.

9. SOVEREIGN IMMUNITY.

The Contractor acknowledges that the State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Contract.

10. GOVERNING LAW; JURISDICTION

- a. Governing Law; Jurisdiction.** The Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

11. TERMINATION.

- a. Termination Assistance.** Upon nearing the end of the final term of this Contract, and without respect to either the cause or time of such termination, the Contractor shall take all reasonable and prudent measures to facilitate the transition to a successor provider. The Contractor shall, at any time during the six (6) months preceding termination, provide such information about the System as will be reasonably required by the State and/or the successor for purposes of planning the transition. The Contractor shall immediately provide historical records to the State in a form acceptable to the State for the preceding seven years or, if less, the Term of the Contract.

The Contractor agrees, after receipt of a notice of termination, and except as otherwise directed by the State, the Contractor shall:

1. Stop work under the Contract on the date, and to the extent, specified in the notice;
2. Immediately deliver copies of all subcontracts and all third party contracts executed in connection with the performance of the Services;
3. If SOV is entitled to a license, sublicense or other right to use any Equipment or Software owned, leased or licensed by Contractor and utilized in performing the Services, provide for the license, sublicense, lease or other right, as applicable;

4. Place no further orders or subcontracts for services, except as may be necessary for completion of such portion of the work under the Contract that is not terminated as specified in writing by the State;
5. Assign, to the extent applicable or as the State may require, all subcontracts and all third party contracts executed in connection with the performance of the Services to the State or the successor provider;
6. Perform, as the State may require, such knowledge transfer and other services as are required to allow the Services to continue without interruption or adverse effect and to facilitate orderly migration and transfer of the services to the successor provider;
7. Complete performance of such part of the Services as shall not have been terminated; and
8. Take such action as may be necessary, or as the State may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest and to transfer that property to a successor.

Contractor acknowledges that, if it were to breach, or threaten to breach, its obligation to provide the State with the foregoing assistance, the State would be immediately and irreparably harmed and monetary compensation would not be measurable or adequate. In such circumstances, the State shall be entitled to obtain such injunctive, declaratory or other equitable relief as the State deems necessary to prevent such breach or threatened breach, without the requirement of posting any bond and Contractor waives any right it may have to allege or plead or prove that the State is not entitled to injunctive, declaratory or other equitable relief. If the court should find that Contractor has breached (or attempted or threatened to breach) any such obligations, Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive or any equitable relief, Contractor will not oppose the entry of an order compelling its performance and restraining Contractor from any further breaches (or attempted or threatened breaches).

- b. Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Data and Work Product (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.
- c. No Waiver of Remedies.** No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- d. Contractor Bankruptcy.** Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code.

Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Data and Work Product.

12. LIMITATION OF LIABILITY.

THE CONTRACTOR'S LIABILITY TO THE STATE SHALL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO TWO TIMES THE MAXIMUM CONTRACT AMOUNT.

THIS LIMITATION SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE FOR THIRD PARTY CLAIMS; AND (B) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

13. ACCESS TO STATE DATA:

Within ten (10) business days of a request by State, the Contractor will make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Data and Work Product in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however,* in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all Work Product and State Data to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

14. FACILITIES.

- a. State Facilities.** During the term of this Contract, the State may make available to Contractor space in any State facility applicable to the Services, subject to the conditions

that Contractor: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of this Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

- b. Contractor Facilities.** Contractor will be responsible for procuring, managing, maintaining and otherwise making available all Contractor Resources necessary to provide the Services in accordance with the Requirements hereunder. Contractor will seek and obtain the State's prior written approval for any relocation of any Contractor Facilities at, from or through which the Services are provided and shall mitigate any impact to the State. Any such relocation shall be without additional cost to the State. No Contractor Facility providing Services pursuant to this Contract shall be located outside the United States.

15. AUDIT

- a. Records Available for Audit.** The Contractor shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Contractor in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- b. Audit Rights.** Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or

Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

- c. **Software Licensee Compliance Report.** In lieu of any requirement in a Contractor Document that the State provide the Contractor with access to its system for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.
- d. **Operations Security.** The Contractor shall cause a SOC 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

15. CONFLICTS OF INTEREST

Contractor agrees that during the term of this Contract, its performance shall be solely in the best interest of the State. Contractor will not perform services for any person or entity which has also contracted with the State of Vermont in connection with the same project, without express written consent of the State. Contractor shall fully disclose, in writing, any such conflicts of interest, including the nature and extent of the work to be performed for any other person or entity so that the State may be fully informed prior to giving any consent. Contractor agrees that the failure to disclose any such conflicts shall be deemed an event of default under this Contract, and this Contract shall be terminable immediately.

16. MISCELLANEOUS

- a. **Taxes.** Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.
- b. **Force Majeure.** Neither the State nor the Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control making it illegal or impossible to perform their obligations under this Contract, including without limitation, acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war or riots. . If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Contract, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
- c. **Marketing.** Neither party to this Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of such party prior to release.
- d. **Export Control; Anti-Bribery.** Neither Contractor nor any Contractor Personnel are included on any list of entities maintained and updated by the Department of Commerce, Bureau of Industry and Security to whom the export of certain types of software is prohibited by United States' Laws, as updated from time to time ("**Entity List**") or list of individuals maintained and updated by the Department of Commerce, Bureau of Industry and Security to whom the export of certain types of software is prohibited by United States' Laws, as updated from time to time ("**Denied Persons List**") and Contractor shall never involve any entity or Contractor Personnel included on any Entity List or Denied Persons List in connection with the State account or any Services. Contractor shall provide, upon State's request and at any time new Contractor Personnel are assigned to the State account, a list of such Contractor Personnel and a statement confirming that such Contractor Personnel are not included on any Entity List or Denied Persons List. Contractor additionally acknowledges certain Software and technical data to be provided in connection with Services hereunder and certain transactions contemplated in connection with this Contract may be subject to export controls under the Laws of the United States and other countries and Contractor agrees and covenants Contractor shall not export or re-export any such items or any direct product thereof or undertake any transaction in violation of any such Laws. Contractor shall be responsible for, and shall coordinate and oversee, compliance with such Laws in respect of such items exported or imported hereunder and Contractor shall include with copies of all State Software provided by State

to Contractor that Contractor is permitted to use outside of the United States specific documentation stating that "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion or re-export contrary to U.S. law is prohibited." Contractor has not violated Laws or any policies referenced herein regarding the offering of inducements in connection with this Contract.

ATTACHMENT E BUSINESS PARTNER AGREEMENT

This Business Partner Agreement ("Agreement") is entered into by and between **the State of Vermont, Agency of Human Services operating by and through its Department of Vermont Health Access ("DVHA")** and **Archetype Consulting, Inc. ("Business Partner")** as of **January 3, 2015 ("Effective Date")**. This Agreement supplements and is made a part of the Contract to which it is attached.

DVHA and Business Partner ("the Parties") agree to comply with the terms of this Agreement and the standards promulgated under the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act (Public Law 111-152), and referred to collectively as the Affordable Care Act (ACA), and 45 CFR §155.260, "Privacy and security of personally identifiable information." Business Partner information that constitutes protected health information (PHI) may have additional standards to which the Business Partner must adhere, which would be set out in a separate agreement.

1. Definitions All capitalized terms in this Agreement have the meanings identified in this Agreement and 45 CFR Part 155, "Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act."

- 1.1 The term "**Services**" includes all work performed by the Business Partner for or on behalf of DVHA that requires the access, collection, use and/or disclosure of personally identifiable information (PII).
- 1.2 The term "**PII**" refers to personally identifiable information in any medium, including electronic, which can be used to distinguish or trace an individual's identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name.
- 1.3 The term "**Minimum Functions**" includes all work performed (or Contracted to be performed) pursuant to subparts D, E, H, and K of 45 CFR 155, if such work requires the Business Partner to create, collect, use, or disclose PII.
- 1.4 The term "**Agreement**" refers to this Business Partner Agreement, which details the privacy and security requirements that the Parties must adhere to.
- 1.5 The term "**Individual**" includes applicants, enrollees, and qualified individuals applying for coverage at the Vermont Health Insurance Exchange or Medicaid Agency.
- 1.6 The term "**Breach**" means the loss of control, compromise, and unauthorized disclosure, acquisition, access, or use, and any similar term referring to situations where: (a) PII is used for an unauthorized purpose, or (b) persons other than authorized users have access or potential access to PII.

2. Authorized Uses/Disclosures of PII

- 2.1 Except as limited in this Agreement, Business Partner may only create, collect, use or disclose PII to the extent necessary to perform Services specified in the underlying Contract with DVHA. In the course of providing Services, Business Partner shall not

use or disclose PII in any manner that would constitute a violation of 45 CFR §155.260 if used or disclosed by DVHA.

- 2.2 Business Partner may make PII available to its employees who need access to perform Services and/or Minimum Functions, provided that Business Partner makes such employees aware of the creation, collection, use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Partner must also require workforce compliance with 45 CFR §155.260 when employees create, collect, use, or disclose PII in the course of providing Services
3. **Privacy Requirements** Uses and disclosures of PII to carry out the Services identified in the Contract must be of the minimum amount of PII necessary to perform the services. Business Partner may not create, collect, use or disclose PII gathered for the purposes listed in 45 CFR §155.260(a)(1) while performing Minimum Functions unless the creation, collection, use or disclosure is consistent with the written policies and procedures identified by the State in accordance with 45 CFR §155.260. In addition, Business Partner must ensure workforce compliance with these policies and procedures
4. **Security Safeguard Requirements**
Business Partner shall implement and use appropriate safeguards to prevent the use or disclosure of PII except as provided for by this Agreement, an Interconnection Security Agreement, if applicable, and as set forth in 45 CFR 155.260(a)(3)(vii) and (4).
5. **Documenting and Reporting Breaches**
Business Partner shall report to DVHA any Breach of PII as soon as it (or any of its employees or agents) becomes aware of such Breach, and in no case later than one (1) hour after it (or any of its employees or agents) become aware of the Breach. If DVHA determines that a Breach of PII occurred for which one of Business Partner's employees or agents was responsible, upon its request, Business Partner shall provide notice to the individual(s) whose PII was the subject of the Breach. When requested to provide notice, Business Partner shall consult with DVHA about the timeliness, content and method of notice, and shall receive DVHA's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Partner. Business Partner shall also be responsible for any reporting as required by 9 V.S.A. § 2435.
6. **Mitigation and Corrective Action Requirements** Business Partner shall mitigate, to the extent practicable, any harmful effect that is known to it of a Breach of PII. Business Partner shall draft and carry out a plan of corrective action to address any incident of impermissible collection, use or disclosure of PII, subject to DVHA's prior review and written approval.
7. **Requirements for Agreements with Third Parties** Business Partner may only disclose PII to its agents, including subcontractors, for the purposes authorized by this Agreement. Business Partner shall ensure that any agent (including any subcontractor) to whom it provides PII received from DVHA or created or received by Business Partner on behalf of DVHA agrees in a written agreement to the same PII restrictions and conditions that apply through this Agreement to Business Partner. Business Partner must enter into the written agreement and obtain the prior written consent of DVHA before any use or disclosure of PII

to such agent. The written agreement must identify DVHA as a direct and intended third party beneficiary with the right to enforce any Breach of the agreement concerning the use or disclosure of PII. Business Partner shall provide a copy of the signed agreement to DVHA upon request.

8. Termination

8.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by DVHA or until all of the PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA is destroyed or returned to DVHA subject to Section 9.

8.2 If Business Partner breaches any material term of this Agreement, DVHA, without liability or penalty, may either: (a) provide in writing an opportunity and time frame for Business Partner to cure the breach and terminate the Contract if Business Partner fails to cure; or (b) immediately terminate the Contract if DVHA believes that cure is not reasonably possible. DVHA has the right to seek to cure any breach by Business Partner and this right, regardless of whether DVHA cures such breach, does not lessen any right or remedy available to DVHA at law, in equity, or under the Contract, nor does it lessen Business Partner's responsibility for such breach or its duty to cure such breach.

9. Responsibility for the Return/Destruction of PII

9.1 Business Partner, in connection with the expiration or termination of the Contract, shall return or destroy, at the discretion of DVHA, all PII received from DVHA or created or received by Business Partner on behalf of DVHA pursuant to the Contract that Business Partner still maintains within thirty (30) days after such expiration or termination. Business Partner shall not retain any copies of the PII. Within the thirty (30) day period, Business Partner shall certify in writing to DVHA that (1) all PII has been returned or destroyed, and (2) Business Partner does not continue to maintain any PII.

9.2 Business Partner shall provide to DVHA notification of any conditions that Business Partner believes make the return or destruction of PII infeasible. If DVHA agrees that return or destruction is infeasible, Business Partner shall extend the protections of this Agreement to such PII and limit further uses and disclosures of such PII to those conditions that make the return or destruction infeasible for so long as Business Partner maintains such PII.

10. Penalties Business Partner understands that it may be subject to a civil penalty, in addition to other penalties that may be prescribed by law, resulting from the improper creation, collection, use or disclosure of PII. In addition, violations of this Agreement may result in notification by DVHA to law enforcement officials and regulatory, accreditation, and licensure organizations.

11. Training Business Partner shall participate in training regarding the use, confidentiality, and security of PII at DVHA's request.

12. Miscellaneous

- 12.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
- 12.2 Business Partner shall cooperate with DVHA to amend this Agreement from time to time as is necessary for DVHA to comply with 45 CFR §155.260 or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
- 12.3 Any ambiguity in this Agreement shall be resolved to permit DVHA to comply with 45 CFR §155.260, or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
- 12.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., the ACA) in construing the meaning and effect of this Agreement.
- 12.5 As between Business Partner and DVHA, DVHA owns all PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA.
- 12.6 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement.

The following provisions apply only to those Business Partners that will be accessing Federal Tax Information (FTI).

As applicable, DVHA and Business Partner ("the Parties") agree to comply with the terms of this Agreement and the Language for General Services and Technology Services pursuant to IRS Publication 1075, Exhibit 7:

13. General Services; Performance In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 13.1 All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- 13.2 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
- 13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 13.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 13.5 The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 13.6 DVHA will have the right to void the Contract if the contractor fails to provide the

safeguards described above.

14. General Services; Criminal/Civil Sanctions

- 14.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 14.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 14.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- 14.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
15. **General Services; Inspection** The IRS and (is this DVHA?) shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.
16. **Technology Services; Performance** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 16.1 All work will be done under the supervision of the contractor or the contractor's employees.
- 16.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- 16.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 16.4 The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 16.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material

- destroyed, and the method used.
- 16.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 16.7 No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS.

17. Technology Services; Criminal/Civil Sanctions

- 17.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 17.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 17.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of

- which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 17.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
18. **Technology Services; Inspection** The IRS and DVHA shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

(Rev: 11/15/13)

ATTACHMENT F AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org
3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, ADP (Automated Data Processing) *System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.
5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

Protected Health Information: The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A.

§4919(a)(3) & 33 V.S.A. §6911(c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.
10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms

such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.
14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities

that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10